

**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER**

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UNITED STATES OF AMERICA,	)	
Complainant,	)	8 U.S.C. § 1324a Proceeding
	)	
v.	)	OCAHO Case No. 97A00144
	)	
CHICAGO TEXTILE AND	)	Judge Robert L. Barton, Jr.
FASHION, INC.,	)	
Respondent.	)	
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**FINAL DECISION AND ORDER GRANTING COMPLAINANT'S  
MOTION AND ENTERING DEFAULT JUDGMENT**

*(November 3, 1997)*

**I. PROCEDURAL HISTORY**

The complaint in this case was filed on July 28, 1997, and, according to the signed certificate of service, it was received by Respondent's counsel on August 4, 1997. A copy of the Rules of Practice and Procedure (hereinafter Rules of Practice) that govern proceedings before Administrative Law Judges in the Office of the Chief Administrative Hearing Officer (OCAHO) was served with the complaint. No answer to the complaint was filed, and consequently on October 7, 1997, Complainant filed a motion for default judgment. The OCAHO Rules of Practice provide that a party has fifteen days to file an answer to a motion served by mail. 28 C.F.R. §§ 68.8(b)(2) and 68.11(b).

The OCAHO Rules of Practice also provide, inter alia, that a respondent must file a written answer to the complaint within thirty (30) days after the service of a complaint.<sup>1</sup> 28 C.F.R. § 68.9(a) (1996). The answer must specifically address the paragraphs alleged in the complaint. In response to each paragraph of the complaint, a respondent must admit, deny or state that it does not have and is unable to obtain sufficient information to admit or deny each allegation. 28 C.F.R. § 68.9(c)(1) (1996). A statement of lack of sufficient information has the effect of a denial. Id. A general denial is deemed a failure to answer; any statement or allegation contained in the complaint that is not

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<sup>1</sup> Although service of all other pleadings is effective at the time of mailing, service of a complaint is not effective until it is received. See 28 C.F.R. § 68.8(c)(1) (1996).

specifically denied in the answer may be deemed as true. Id.

In this case, the complaint was mailed to both Respondent and Respondent's counsel. The return receipt card shows that the complaint was received by Respondent's counsel on August 4, 1997, and service on counsel constitutes effective service of the complaint on Respondent.<sup>2</sup> 28 C.F.R. § 68.3(a)(3). Consequently, an answer should have been filed not later than September 4, 1997. Since no answer was filed, Respondent was in default, and consequently on October 9, 1997, following receipt of Complainant's motion for default judgment, a Notice of Default and Show Cause Order (Show Cause Order) was issued.

Respondent was advised in the Show Cause Order that when a party fails to file an answer within the prescribed time limit, such failure shall be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint, and the Judge may enter a judgment of default. 8 C.F.R. § 68.9(b) (1996). Therefore, Respondent was ordered to file an answer to the complaint, and a response to the motion for default, not later than October 31, 1997. Further, Respondent was ordered to explain why it failed to answer the complaint in a timely manner and why a late answer should be accepted. Respondent was warned that if it failed to comply with the Show Cause Order, I might grant Complainant's motion for default judgment and enter a civil penalty against Respondent. Despite this warning, Respondent has neither filed an answer to the complaint nor responded to the motion for default judgment or the Show Cause Order.

## II. Discussion

With respect to the failure to file an answer to the complaint, as was explained in the Show Cause Order, the Rules of Practice require a respondent to serve an answer to the complaint and provide that failure to do so shall constitute a default. 28 C.F.R. § 68.9. The Rules also provide that a party shall be deemed to have abandoned a request for hearing if the party or his representative fails to respond to orders issued by the Administrative Law Judge. 28 C.F.R. § 68.37(b). Failure to respond to an order to show cause invites a judgment of default, especially where, as here, it appears that Respondent has ignored the Court's orders and de facto has abandoned the request for a hearing. See United States of America v. Broker's Furniture and Manufacturing, Inc., et. al., 5 OCAHO 789 (1995); United States v. Hosung Cleaning Corp., 4 OCAHO 681 (1994). Even in cases where they appeared without counsel, parties that failed to obey Judges' orders were found to have abandoned their requests for hearing or to have abandoned their complaints. United States v. Erlina Fashions, Inc., 4 OCAHO 656 (1994); Holquin v. Dona Ana Fashions, 4 OCAHO 605 (1994); Brooks v. Watts Window World, 3 OCAHO 570 (1993); Speakman v. Rehabilitation Hospital of South Texas, 3 OCAHO 476 (1993); Palancz v. Cedars Medical Center, 3 OCAHO 443 (1992).

Given the failure by Respondent and his counsel to answer the Complaint or take any other action to defend his interests in this matter, I must conclude that Respondent has abandoned his

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<sup>2</sup> Although Respondent's counsel Jeffrey Kriezelman was permitted to withdraw on September 18, 1997, he was counsel of record at the time the complaint was served on him on August 4, 1997, and therefore such service constituted effective service on Respondent.

Request for Hearing. Respondent is in default not only for failure to answer the Complaint, but also for failure to respond to the Show Cause Order. See 28 C.F.R. §§ 68.9(b) and 68.37(b)(1).

### **III. Findings, Conclusions and Order**

1. Complainant's Motion for Default Judgment is granted;
2. I find that each and every paragraph of the Complaint, including the prayer for relief, has been admitted by Respondent by its failure to answer the Complaint;
3. Respondent shall cease and desist from violating 8 U.S.C. § 1324(a)(1)(A) by knowingly hiring or continuing to employ aliens not authorized to work in the United States;
4. Respondent shall pay a civil money penalty of \$25,300; and
5. The notice of hearing in this case is canceled.

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**ROBERT L. BARTON, JR.**  
**ADMINISTRATIVE LAW JUDGE**

**NOTICE REGARDING APPEAL**

Pursuant to the Rules of Practice, 28 C.F.R. § 68.53(a)(1), a party may file with the Chief Administrative Hearing Officer (CAHO) a written request for review together with supporting arguments. The CAHO also may review the decision of the Administrative Law Judge on his own initiative. The decision issued by the Administrative Law Judge shall become final within thirty days of the date of the decision and order unless the CAHO modifies or vacates the decision and order. See 8 U.S.C. § 1324a(e)(7) and 28 C.F.R. § 68.53(a).

Regardless of whether a party appeals this decision to the Chief Administrative Hearing Officer, a party adversely affected by a final order issued by the Judge or the CAHO may, within 45 days after the date of the final order, file a petition in the United States Court of Appeals for the appropriate circuit for the review of this order. See 8 U.S.C. § 1324a(e)(8).

# **CERTIFICATE OF SERVICE**

I hereby certify that on this 3rd day of November, 1997, I have served the foregoing Final Decision and Order Granting Complainant's Motion and Entering Default Judgment on the following persons at the addresses shown, by first class mail, unless otherwise noted:

Jennie L. Giambastiani  
Deputy District Counsel  
Immigration and Naturalization Service  
10 West Jackson Blvd., Suite 610  
Chicago, IL 60604  
(Counsel for Complainant)

Chicago Textile and Fashion, Inc.  
3535 West 26th Street, 2nd Floor  
Chicago, IL 60623  
(Respondent)

Stephen D. Berman, Esq.  
20 N. Clark Street, Suite 725  
Chicago, IL 60602

Dea Carpenter  
Associate General Counsel  
Immigration and Naturalization Service  
425 "I" Street, N.W., Room 6100  
Washington, D.C. 20536

Office of the Chief Administrative Hearing Officer  
Skyline Tower Building  
5107 Leesburg Pike, Suite 2519  
Falls Church, VA 22041  
(Hand Delivered)

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Linda Hudecz  
Legal Technician to Robert L. Barton, Jr.  
Administrative Law Judge  
Office of the Chief Administrative Hearing Officer  
5107 Leesburg Pike, Suite 1905  
Falls Church, VA 22041  
Telephone No.: (703) 305-1739  
FAX NO.: (703) 305-1515